

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

ROBERT LEMONS,

Defendant.

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: CASE NO. 1:02 CR 349
:
:
: MEMORANDUM AND ORDER
: GRANTING DEFENDANT'S MOTION
: FOR RECONSIDERATION
:
:
:

UNITED STATES DISTRICT JUDGE LESLEY WELLS

Before the Court is defendant Robert Lemons' "Motion for Reconsideration of Marginal Entry and a Nunc Pro Tunc Order" (Doc. 35). In his motion, Mr. Lemons asks the Court to reconsider its marginal order, entered 27 August 2007, denying his request for credit for time served in state custody or request for a concurrent retroactive designation.

The motion for reconsideration is predicated on Mr. Lemons' contention that the original 29 June 2007 letter from the Bureau of Prisons (BOP) failed to include significant information bearing on the question of whether Mr. Lemons' state and federal sentences should be run concurrently. Through counsel, Mr. Lemons expands the record to note that:

Cuyahoga County Judge Eileen A. Gallagher sentenced Mr. Lemons to a state sentence to run concurrent with the federal sentence. The Cuyahoga County Sheriff's Department then attempted to return him to federal custody. The United States Marshal Service refused to take custody because the original custody belonged to Cuyahoga County. He was in federal custody only by writ.

(Doc. 35 p. 3). The government has indicated that it does not object to the Defendant's request in light of the new information that the state sentence was meant to run concurrent to Mr. Lemons' federal sentence.

Upon review of the record, it is this Court's position that Mr. Lemons' state institution be retroactively designated, pursuant to the decision in Barden v. Keohone, 921 F.2d 476 (3rd Cir. 1990), for service of his federal sentence resulting in a release date of on or about 7 February 2017, rather than a release date of 7 May 2022. (Doc. 35, Exhibit A, 29 June 2007 Bureau of Prisons' Letter). Although entirely within the discretion of the Bureau of Prisons, this Court believes this to be appropriate and just. Mr. Joseph Pinjuh, the Assistant U.S. Attorney who tendered Mr. Lemons' plea, and his office do not object to such a designation. Further, in sentencing Mr. Lemons, Cuyahoga County Common Pleas Judge Gallagher ran the defendant's state sentence concurrent with his federal sentence. (Doc. 35, Exhibit C, State Court Docket, p. 4).

For all the foregoing reasons, this Court grants the Defendant's Motion for Reconsideration. It is this Court's position that Mr. Lemons' state institution be retroactively designated for service of his federal sentence resulting in a release date of on or about 7 February 2017.

IT IS SO ORDERED.

/s/Lesley Wells
UNITED STATES DISTRICT JUDGE

